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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

BAXTER N. FOUST, Administrator, etc.,

Petitioner,

against

MUNSON STEAMSHIP LINE, Debtor in Reorganization,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

ARTHUR M. BOAL,
CHARLES J. FAY,
ALFRED N. HEUSTON,
Attorneys for Respondent.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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No. 877.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

BAXTER N. FOUST, Administrator, etc.,
Petitioner,

against

MUNSON STEAMSHIP LINE, Debtor in Reorganization,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

Opinion Below.

The first opinion of the Circuit Court of Appeals (Rec. 78) is reported at 80 Fed. (2nd) 859. The second opinion is unreported (Rec. 84).

Jurisdiction of the Court.

The order of the Circuit Court of Appeals sought to be reviewed here, was entered on February 17, 1936. The petition for certiorari was filed on March 30, 1936.

The Questions Presented.

The questions presented are:

1. Is a personal injury tort claim provable and dischargeable in reorganization proceedings under the Corporate Reorganization Amendment of the Bankruptcy Act, known as Section 77-B (U. S. Code, Title 11, Section 207)?

2. May the District Court in reorganization proceedings stay actions at law for personal injuries against the debtor?

3. If the District Court had discretion to issue an injunction, did it abuse its discretion in doing so and in requiring the liquidation of the claim, as in the case of other similar claims, before a Special Master?

Statement.

The order approving the debtor Munson Steamship Lines' petition for reorganization and enjoining the prosecution of all pending suits was dated June 13, 1934 (Rec. 20, 27, 28). The petitioner moved to vacate the injunction so as to permit him to prosecute the action at law to final judgment. That motion was denied with leave to have his claim referred to a Special Master. The petitioner then moved in the Circuit Court of Appeals for leave to appeal to that Court. That Court stated in its opinion (Rec. 63):

> "Leave to appeal will be granted not because the appellant may have a right to trial by jury of his claim against the company upon its reorganization, but because we are in doubt whether the cause will

be discharged by the final order in the reorganization proceedings; Sec. 77-B (h), (k) and (o). If it will not be, it may be that the Court should not stay the action at all; Sec. 11 (a).

"The briefs and argument will not, therefore, touch the right of trial by jury of the claim in reorganization as to which leave is denied; it will be confined to whether the action can be stayed at all."

The Clerk in entering the order did not restrict it in accordance with the opinion, but merely marked the motion granted (Rec. 64).

The Circuit Court of Appeals in its first opinion held that tort personal injury claims are provable and dischargeable in reorganization proceedings and that the District Court had power to enjoin their prosecution, and then asked for further briefs on the question of whether there had been any abuse of discretion in refusing a jury trial, and after receiving further briefs, the Court held that there was no abuse of discretion and affirmed the order.

The respondents contended in the District Court and the Circuit Court of Appeals that the question of insurance was irrelevant and immaterial. All the information concerning insurance was contained in affidavits of the petitioner's counsel and in his briefs. From these it does not appear whether the alleged policy was issued in the State of New York or not. Section 109 of the Insurance Law of the State of New York applies only to policies issued in the State of New York, and whether as applied to marine insurance policies it is constitutional presents a serious question. There is nothing in the record as to the terms of the alleged policy of insurance, except that the petitioner stated in his brief in the Circuit Court of Appeals that his

claim was worth $5,000, and that the policy contained a $2,500 deductible. In other words, his claim was fifty percent insured and fifty percent uninsured. This statement was accepted by the Circuit Court of Appeals as correct.

ARGUMENT.

The decision of the Circuit Court of Appeals was correct in all respects.

POINT I.

Personal injury tort claims are provable and dischargeable in reorganizations under Section 77-B.

The term "creditor" is defined in Sub-section (b) (10):

> "The term 'creditor' shall include for all purposes of this section and of the reorganization plan, its acceptance and confirmation, all holders of claims of whatever character against the debtor or its property, including claims under executory contracts, whether or not such claims would otherwise constitute provable claims under this title."

And in dealing with the final reorganization decree, it is provided (Subdivision (h)):

> "* * * Such final decree shall discharge the debtor from its debts and liabilities. * * *"

A practical plan of reorganization could not be worked out which would leave the debtor subject to suit by tort creditors immediately upon resumption of business after reorganization, and it is clearly intended to provide for the proof and discharge of all claims and liabilities, whether contract or tort.

POINT II.

The District Court was authorized to enjoin the petitioner's action at law.

Subdivision (c) (10) (U. S. Code, Title 11, Sec. 207 (c) (10)) provides that the District Court

> "in addition to the provisions of section 29 of this title (Sec. 11 of the original Bankruptcy Act) for the staying of pending suits against the debtor, may enjoin or stay the commencement or continuation of suits against the debtor until after final decree." (Parenthesis ours).

This gives the Reorganization Court greater powers to stay proceedings than is imposed by the Bankruptcy Court and covers the petitioner's action. The Circuit Court of Appeals also held that if a claim was provable and dischargeable in reorganization, there was also power to enjoin it under Section 11 of the original Bankruptcy Act (U. S. Code, Annot., Sec. 29).

POINT III.

There was no abuse of discretion on the part of the District Court in staying the petitioner's action at law.

The District Court had a right to determine the method for liquidating claims in reorganization proceedings. He wished a more speedy determination by a Special Master than the ordinary proceedings in an action at law, so he could have all claims liquidated within a specified period of time because, until this was done, no plan of reorganization could be approved. Trials of seamen's action at law place a heavy burden upon the Trustees who must have wit-

nesses present in court, whereas in proceedings before a Special Master their testimony could be taken as they were available at great saving. The District Court was correct in adopting a plan which would enable the Trustees to make such a saving.

The questions of insurance referred to in the petitioner's brief at great length have no relevancy here. If the debtor carried insurance covering this liability, among others, the nature and extent of that insurance would not come into consideration until after the debtor's liability had been established in the reorganization proceedings.

Section 109 of the Insurance Law of the State of New York applies only to policies issued in that State and there is nothing to show that this alleged policy referred to here was issued in New York. The tort occurred on board the debtor's vessel on navigable waters of the State of Maine. It is doubtful whether Section 109, as construed to apply to the policy in question, is constitutional in view of the decisions of this Court in *Southern Pacific* v. *Jensen*, 244 U. S. 205, because it "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in the international and interstate relations."

POINT IV.

It is respectfully submitted that the petition should be denied.

Respectfully submitted,

ARTHUR M. BOAL,
CHARLES J. FAY,
ALFRED N. HEUSTON,
Attorneys for Respondent.

Dated: New York, April 17, 1936.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 19.

BAXTER N. FOUST, Administrator, etc.,
Petitioner,

against

MUNSON STEAMSHIP LINE, Debtor in Reorganization,
Respondent.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF ON BEHALF OF RESPONDENT.

ARTHUR M. BOAL,
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Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 19.

BAXTER N. FOUST, Administrator, etc.,
Petitioner,

against

MUNSON STEAMSHIP LINE, Debtor in Reorganization,
Respondent.

BRIEF IN BEHALF OF RESPONDENT.

Opinions.

The first opinion of the Circuit Court of Appeals (R. 47) is reported 80 Fed. (2d) 859 and the opinion on rehearing (R. 53) is reported 82 Fed. (2d) 289. The District Court wrote no opinion.

Jurisdiction.

The order of the Circuit Court of Appeals affirming the order of the District Court was entered on February 17, 1936 (R. 54). The petition for certiorari was filed March 30, 1936, and was granted on April 27, 1936 (R. 55).

Questions Presented.

1. Is a personal injury tort claim provable and dischargeable in reorganization under the Corporate Reorganization Amendment of the Bankruptcy Act, known as 77-B (U. S. Code, Title 11, Sec. 207)?

2. Has the District Court jurisdiction in reorganization proceedings to stay actions at law for personal injuries and death against the debtor?

3. Did the District Court abuse its discretion in requiring tort personal injury and death claims to be liquidated before a Special Master?

Statement.

The Debtor, Munson Steamship Line, filed a petition in the District Court in which it set forth its assets, its indebtedness, the fact that a suit was pending against it for the appointment of a receiver, and that it was apprehensive that other creditors would bring suit, attach its property and cripple it in the conduct of its business; that its property, assets and business as a going concern at a fair valuation exceeded its indebtedness, but that (R. 12)

> "Sixth. That the debtor is unable to meet its debts as they mature and that it desires to effect a plan of reorganization pursuant to Section 77B of Chapter VIII of the Acts of Congress relating to bankrutcy."

The District Court entered an order on June 13, 1934 (R. 13):

> "1. That said petition be and it hereby is approved as properly filed under Section 77B of Chapter VIII of the Acts of Congress relating to bankruptcy.
>
> "2. That the debtor is unable to meet its debts as they mature."

and further provided (R. 18) that all persons

> "be and they hereby are enjoined and restrained * * * from instituting or prosecuting or continuing the prosecution of any action at law or action or proceeding in equity or admiralty or bankruptcy against the debtor or the trustees in any court of law or equity or admiralty or bankruptcy * * *."

On January 25th, 1935 the petitioner gave notice of motion to be made on January 30th to vacate the order, to permit him

> "to prosecute his claim against the Munson Steamship Line to a final award and/or final awards against Edward P. Farley, Esq., and Morton L. Fearey, Esq., trustees for Munson Steamship Line * * * *". (R. 20).

In a supporting affidavit petitioner's attorneys stated that petitioner was entitled to a jury trial as a matter of right, and further urged that the Munson Steamship Line was covered by liability insurance.

> "Deponent further states that if the Court permits this administrator to perfect his claim to a final award, he will then bring suit under Section 109 of the Insurance Law of the State of New York for satisfaction of the award, if any" (R. 22).